**Cedar Valley Corp. *and* Local Union No. 309, Laborers International Union of North America, AFL–CIO *and* Local Union No. 544, the Operative Plasterers and Cement Masons International Association, AFL–CIO *and* Local 537, International Union of Operating Engineers, AFL–CIO *and* Teamsters, Chauffeurs, Warehousemen and Helpers Local 371, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO.** Cases 33–CA–8721, 33–CA–8724, 33–CA–8735, and 33–CA–8821

April 30, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On June 4, 1990, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response and a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record[1] in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

In contending that it was not obligated to honor contracts with Operating Engineers Local 537 and Laborers Local 309, the Respondent argues, inter alia, that after expiration of their contracts on April 30, 1989, a successor collective-bargaining agreement was not signed by the Associated Contractors of Rock Island and Operating Engineers Local 537 until on or after June 5, 1989, and, that in the case of Laborers Local 309, no agreement was signed until June 13, 1989. Thus, according to the Respondent, there was a ''gap'' between the April 30, 1989 expiration of the old contracts and execution of the new contracts. The Respondent argues that during this ''gap'' it repudiated any relationship with Local 537 and Local 309.[3]

The record shows, however, that there was, in fact, no ''gap.'' Laborers' Local 309 Vice President Melvin Downs testified without contradiction that the Associated Contractors of Rock Island reached a new agreement with Laborers Local 309 prior to the April 30, 1989 expiration date of the old agreement, and that the new agreement was in effect on May 1. Downs explained that the new agreement was not proofread and printed until June 13. Jack Schadt of Operating Engineers Local 537 testified without contradiction that ratification of the new agreement between the Association and the Operating Engineers Local 537 occurred before the April 30 expiration date of the old contract. He also testified that he mailed the previously agreed-upon wage rates and fringe benefits to the heavy and highway contractors on June 5.

The Respondent does not contend that, when the parties agreed to new agreements prior to expiration of the old Laborers' and Operating Engineers' contracts, there were any unsatisfied conditions precedent to the operation of the new contracts. Thus, both the Operating Engineers' and Laborers' new agreements were effective on the April 30, 1989 expiration of the old contracts. That these contracts may not have been formalized, printed, or mailed on May 1 does not make them any less binding for the purpose of our finding a contractual continuum in this case. We conclude that there was no ''gap'' during which the Respondent could repudiate either of these agreements.

Teamsters Local 371 had an 8(f) contract with the Associated Contractors that was initially effective May 1, 1977, until April 30, 1980, and which provided for automatic renewal annually unless termination or modification was sought by written notice of either party. Although the contract was modified after this initial period, the parties continued their contractual and bargaining relationship without interruption through 1989. The Respondent contends, however, that, on expiration of the April 30, 1989 contract, Teamsters Local 371 did not enter into a new contract with the Association until August 23, 1989, and that the Respondent had repudiated its relationship with this Union as early as August 1985.[4] We disagree with the Respondent's contention that it lawfully repudiated its relationship with Teamsters Local 371. If there were such a repudiation in August 1985, it would have occurred during the term of the then current-contract. A party may not lawfully repudiate an 8(f) agreement during its term. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 109 S.Ct. 222 (1988). We note, also, that after Teamsters Local 371 contacted the Respondent in the summer of 1989 seeking to enforce the contract, the Respondent did not respond to it, let alone advise Local 371 that it had previously repudiated the relationship. Thus, the Respondent's present repudiation argument appears to be a makeweight and an afterthought.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent implicitly has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] The judge did not address this argument.

[4] The judge did not address these arguments.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cedar Valley Corp., Waterloo, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER OVIATT, concurring.

I concur in the decision in this case with considerable reluctance. I agree that the Respondent failed properly to exercise its rights to terminate its 8(f) bargaining relationship. In addition, there certainly is no basis in law or in fact for the Respondent to claim that any union here was decertified as a result of an election held in another jurisdiction (Illinois) when these contracts applied in Davenport, Iowa.

I am concerned, however, about the fragmentation of the multiemployer bargaining unit by 1989 and the obligation of the Respondent to continue thereafter to be bound to the multiemployer contracts when only 2 of the original 13 contractors remained members of the Association. I believe that in a different context that might well be a reason not to require an employer to continue to honor its obligations under the multiemployer agreements. But here, the Respondent did not rely on this fragmentation when it refused to recognize the Unions or to abide by the contracts. Thus, the record reveals that when first confronted with the Unions' demands to apply the contracts, the Respondent did not specify fragmentation of the multiemployer unit as a reason for its refusal to apply the contracts. In these circumstances, I agree with my colleagues that the Respondent violated Section 8(a)(5).

*Judith T. Poltz, Esq.*, for the General Counsel.
*Kevin J. Visser, Esq., Robert E. Konchar, Esq.*, and *Mark J. Rerzberer, Esq.*, of Cedar Rapids, Iowa, for the Respondent.
*Melvin Downs*, of Colona, Illinois, for Laborers 309.
*Don Rainline*, of Rock Island, Illinois, for Cement Mason 544.
*Barry J. Levine, Esq.*, of St. Louis, Missouri, and *Jack Shadt*, of Rock Island, Illinois, for Operating Engineers 537.
*Denny West*, of Rock Island, Illinois, for Teamsters 371.

## DECISION

### STATEMENT OF THE CASE

MARTIN J. INSKY, Administrative Law Judge. On June 6, 8, 21, and September 1, 1989, charges were filed against Cedar Valley Corp. (Respondent), by Laborers 309, Cement Masons 544, Operating Engineers 537, and Teamsters 371, respectively.

Thereafter, on October 18, 1989, the National Labor Relations Board, by the Regional Director for Region 33, ordered that previously issued complaints in Cases 33–CA–8721, 33–CA–8724, 33–CA–8735, and 33–CA–8821, be consolidated for trial. The consolidated complaints allege that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), when it refused to abide by or honor its current collective-bargaining agreements with the four Charging Party Unions and when it unlawfully withdrew recognition from the four Charging Party Unions during the term of the aforesaid collective-bargaining agreements. In all four instances the collective-bargaining agreements in question were 8(f) agreements.

Respondent filed answers to the complaints in which it denied that it violated the Act in any way.

A hearing was held before me in Rock Island, Illinois, on January 18, 1990, and in Davenport, Iowa, on February 20 and 21, 1990.

I find that the General Counsel has proved its case and will recommend an appropriate remedy.

Based on the entire record in this case, to include posthearing briefs filed by the General Counsel and Respondent, and based on my observation of the witnesses and their demeanor, I make the following

### FINDINGS OF FACT

#### I. JURIDICTION

Respondent is, and has been at all times material herein, an Iowa corporation with an office and place of business located in Waterloo, Iowa. It is in the business of concrete paving contracting and has, inter alia, engaged in a paving project which involves Interstate Route 280 in Scott County, Iowa.

Respondent, during the past 12 months, which period is representative of all times material, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its various projects at points within the State of Iowa, supplies and materials valued in excess of $50,000 which were transported to the projects and locations directly from States other than the State of Iowa.

Respondent admits and I find that it is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATIONS INOLVED

Laborers 309, Cement Masons 544, Operating Engineers 537, and Teamsters 371 are now, and have been at all times material, labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Introduction*

All sides agree that the principal case that all parties are looking at for guidance is the Board's decision in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 107 S.Ct. 222 (1988). In *Deklewa* the Board addressed in great detail the entire subject of 8(f) contracts in the construction industry.

Suffice it to say, at this juncture, that the Board held, in part (at 1385) that ''when parties enter into an 8(f) agreement they will be required, by virtue of Section 8(a)(5) and Section 8(b)(3), to comply with that agreement unless the employees vote, in a Board-conducted election, to reject (decertify) or change their bargaining representative. Neither

employers nor unions who are party to 8(f) agreements will be free unilaterally to repudiate such agreements.''

Further, the Board held (at 1386) that ''upon the contract's expiration, the signatory union will enjoy no majority presumption and either party may repudiate the 8(f) relationship.''

B. *Factual Setting*

In 1978 Respondent signed collective-bargaining agreements with the four Charging Party Unions which are based in the Quad Cities of Illinois and Iowa. Three of these agreements—those of Teamsters 371, Operating Engineers 537, and Laborers 309—provided that Respondent agreed to be bound by successive labor agreements with the respective unions negotiated by the Associated Contractors of Rock Island, absent timely notice withdrawing such bargaining authority. The fourth contract, with Cement Masons 544, provided for automatic renewal of the contract, absent timely notice terminating the agreement.

Respondent is based in Waterloo, Iowa, and returned to the Quad Cities area again for another project in 1981. At that time it honored the collective-bargaining agreements with the Quad Cities local unions representing Operating Engineers 537, Laborers 309, and Teamsters 371, and signed a new agreement with Cement Masons 544 containing the same automatic renewal language.

In 1985 Respondent performed its next project in the Quad Cities area. When the Teamsters 371 business agent contacted Respondent concerning this job, Rsepondent asserted it had no collective-bargaining agreement with that union. Teamsters 371 took no further action against Respondent at that time. The Cement Masons 544 business agent visited the jobsite; but because the job was already half done and because he had no workers available to refer to Respondent for hiring, he took no action against Respondent. There is no evidence that Respondent had any contact with Cement Masons 544, Operating Engineers 537 or Laborers 309 at that time, and there is no evidence to show that either Operating Engineers 537 or the Laborers 309 were aware of the project at that time.

Respondent returned to the Quad Cities area for a fourth project in 1989. The project was awarded to Respondent shortly after final bidding closed on April 25, 1989. During May and June, officers and business agents for Laborers 309, Cement Masons 544 and Operating Engineers 537 called and wrote to Respondent demanding that it comply with the terms of the successive labor agreements to which Respondent had agreed to be bound; or, in the case of Cement Masons 544, to the automatically renewed 1981 labor agreement. During June and July, a Teamsters 371 business agent called and visited Respondent's jobsite and made the same type of demand to an individual who had identified himself as a supervisor employed by Respondent.

Respondent's response to all the four unions was that by virtue of certain 1983–1984 NLRB Region 18 representation cases, entailing sister local unions based in Waterloo, Iowa, and vicinity, Respondent had no collective-bargaining agreements with the four Charging Party Unions.

Respondent, as noted above, is an Iowa corporation engaged in the business of concrete paving and general contracting in the construction of roads. Its offices are in Waterloo, Iowa. At all times material herein, until his retirement on December 15, 1989, Lawrence Bogue served as Respondent's executive vice president. For the last 2 years, Steven Jackson served as Respondent's president, in 1978 he served as Respondent's paving superintendent, and in 1981 he served as Respondent's vice president, paving superintendent and project superintendent on a job in Scott County, Iowa. At all times material herein, Larry Clark served as Respondent's treasurer.

Prior to 1983, Respondent was party to collective-bargaining agreements with labor organizations based in Waterloo or Des Moines, Iowa, and vicinity, representing employees in the crafts of operating engineers, laborers, cement masons, and teamsters. These labor organizations were: Operating Engineers 234, Cement Masons 818, Iowa Laborers District Council, and Teamsters 844. These labor organizations represented Respondent's employees employed at its jobsites in Waterloo, Iowa, and vicinity. It is undisputed that the geographic jurisdiction of these labor organizations and the scope of their respective labor agreements did not extend into Scott County, Iowa, or the Quad Cities.

During 1983–1984, each of the four Waterloo-Des Moines based Labor Organizations was party to a representation case before Region 18 of the Board, resulting either in decertification, disclaimer, or withdrawal of the petition in which representation was claimed. As a result Operating Engineers 234, Cement Masons 818, Iowa Laborers District Council, and Teamsters 844 do not represent Respondent's employees. It is undisputed that the four Charging Party Unions were not parties to, and had no notice of, the representation proceedings in the Board's Region 18, which is located in Minneapolis, Minnesota.

Although based in Waterloo, Iowa, Respondent served as general contractor and paving contractor for four highway construction jobs in Scott County, Iowa. These jobs occurred in 1978, 1981, 1985–1986, and 1989 and were referred to during the hearing and in this decision as the Mt. Joy Road, Division St. I, Division St. II, and I-280 jobs, respectively. These are the only four jobs which Respondent performed within tbe geographic jurisdiction of the Charging Party Unions and within the geographic scope of their respective collective-bargaining agreements.

The four Charging Parties are labor organizations based in Rock Island, Illinois. Rock Island is one of four neighboring cities on the Mississippi River which are collectively referred to as the ''Quad Cities,'' consisting of Rock Island and Moline in Illinois and Davenport and Bettendorf in Iowa. The city of Davenport is located in Scott County, Iowa.

Jack Schadt is the current president and business manager of Operating Engineers 537. Only the business manager has authority to negotiate collective-bargaining agreements, although business agents acting under his direction have authority to sign such agreements. From 1975 until 1988, Schadt served on the executive board of Operating Engineers 537. The executive board reviews the expenditures of money and the policies of the local union. Schadt served also as an apprentice instructor and coordinator for 3 years, and has been a member of the union since 1961.

In 1978 Don Kenny, as business manager of Operating Engineers 537, and George Foster Hutcheson, often called ''Hutch,'' served as a business agent. In 1980 George Foster Hutcheson became business manager, and served in this capacity until his retirement in 1986 or 1987. Thereafter, he

moved to the southwest, and his brother, Jack Hutcheson, served as president and business manager until he was defeated by Schadt in an election for this position.

Operating Engineers 537 business managers, business agents, and officers, and George Foster Hutcheson in particular, never represented any other labor organization in bargaining with employers. Specifically, Operating Engineers 537 never represented the other three Charging Party Unions in this case.

For the last 2 years and at present, Dan Adams has been and is, the current business representative of Laborers 309, and Melvin ''Butch'' Downs has been, and is, the vice president and field representative. None of the current officers and agents of Laborers 309 have been in office for more than 2 years, but the office secretary has served for 11 years.

Don Hainline is the business agent for Cement Masons 544, and has served in this capacity for 20 years.

Denny West is, and has been, the vice president and business agent for Teamsters 371 since 1985.

### C. *Mt. Joy Road Job (1978)*

In 1978 Respondent served as the general contractor and paving contractor for a project entailing paving Mount Joy Road, an Iowa county road near the Davenport municipal airport. The job contract was signed on April 13, 1978, and provided for 65 working days, to be completed by October 20, 1978. The contract price was $617,161.06.

On or about June 26, 1978, Lawrence Bogue, on behalf of Respondent, signed a collective-bargaining agreement with Operating Engineers 537. The agreement is captioned ''Heavy and Highway Agreement,'' and recites at the outset that it is an agreement between the ''ASSOCIATED CONTRACTORS with headquarters in Rock Island, Illinois, and/or by individual signers who are engaged in the construction industry as described herein, hereinafter referred to as the Contractor, and the INTERNATIONAL UNION OF OPERATING ENGINEERS, Local 537, hereinafter referred to as the Union.''

The agreement concludes, just above Bogue's signature, with the following language, which is the basis for the General Counsel and Charging Party position that Respondent is bound to successive collective-bargaining agreements negotiated between the Associated Contractors of Rock Island and Operating Engineers 537:

> The undersigned employer hereby becomes a signatory employer to this agreement between the ASSOCIATED CONTRACTORS and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 537.
>
> The undersigned employer signatory hereto who is not a member of the said Association agrees to be bound by any amendments, extensions or changes in this Agreement agreed to between the Union and the Association, and further agree to be bound by the terms and conditions of all subsequent contracts negotiated between the Union and the Association unless ninety (90) days prior to the expiration of this or any subsequent agreement said non-member employer notifies the Union in writing that it revokes such authorization. Further, said non-member employer agrees that notice served by the Union upon said Association and Mediation Services for re-opening, termination or commencement of negotiations shall constitute notice upon and covering the non-member employer signatory hereto.

At no time did Respondent serve Operating Engineers 537 with notice of termination of the 1978 agreement or with notice of withdrawal of the delegation of bargaining authority set forth above. Operating Engineers 537 received the Associated Contractors of Rock Island's negotiated successive collective-bargaining agreements thereafter. The most recent of these is effective by its terms from May 1, 1989, through April 30, 1992.

The geographic jurisdiction of the agreement includes Scott County, Iowa (except for certain river work not entailed in the present case), and does not overlap with the geographic jurisdiction of the Operating Engineers sister local union, i.e., Operating Engineers 234, based in Waterloo, Iowa.

On or about June 26, 1978, Bogue signed, on behalf of Respondent, a collective-bargaining agreement with Laborers 309. The Laborers 309 collective-bargaining agreement is captioned ''Agreement Between Laborers' International Union of North America, Local Union No. 309 Affiliated with AFL–CIO and Associated Contractors Covering Heavy & Highway Construction Work in Rock Island and Mercer Counties in Illinois and Scott County, Iowa.''

On the last page of the Laborers 309 collective-bargaining agreement, just above Lawrence Bogue's signature, the following clause appears, which is the basis for the General Counsel's and Union's assertion that Respondent is bound to successive contracts negotiated between the Associated Contractors of Rock Island and Laborers 309:

> The undersigned Employer hereby becomes a signatory Employer to this Agreement between the Associated Contractors and the Laborers' International Union of North America, Local Union No. 309, AFL–CIO.
>
> The undersigned Employer signatory hereto who is not a member of the said Association agrees to be bound by any amendments, extensions or changes in this Agreement, and further agree to be bound by the terms and conditions of all subsequent contracts negotiated between the Union and the Association unless ninety (90) days prior to the expiration of this or any subsequent Agreement said nonmember Employer notifies the Union in writing that it revokes such authorization. Further, said nonmember Employer agrees that notice server by the Union upon said Association and Meditation Services for re-opening, termination or comencement of negotiations shall constitute notice upon and covering the nonmember Employer signatory hereto.

It is undisputed that Respondent never served Laborers 309 with notice of termination of the collective-bargaining agreement or with withdrawal of the bargaining authority delegated to the Associated Contrators of Rock Island. The Associated Contractors of Rock Island and Laborers 309 negotiated successive collective-bargaining agreements, the most recent of which is effective by its terms from May 1, 1989, to April 30, 1992.

On July 20, 1978, Stephen Jackson signed, on behalf of Respondent, a collective-bargaining agreement with Cement

Masons 544. Article XVII, Duration and Termination, of that agreement provides:

> This contract shall be in effect from May 1, 1978 to April 30, 1981 and shall automatically renew itself thereafter from year to year unless either party hereto gives the other party no less than sixty (60) days notice by registered mail prior to the expiration date expressing their desire to modify, amend or terminate this contract.

Just above Jackson's signature, the agreement provides:

> The undersigned contractor, or association of contractors, does hereby become an additional signatory employer party to this Agreement.

On or about July 5, 1978, Larry Clark, Respondent's treasurer, signed a participation agreement providing that Respondent would make payments into the health and welfare fund created by a trust agreement between the Illinois Conference of Teamsters and various employer associations. The participation agreement recited that Respondent had entered into a collective-bargaining agreement with Teamsters 371. On or about July 17, 1978, Clark signed a similar participation agreement pertaining to the Teamsters 371 Pension Fund maintained by the Central States Southeast and Southwest Pension Fund. This agreement was signed also by a representative of Teamsters 371. On August 25, 1978, Clark signed the actual collective-bargaining agreement to which these participation agreements referred.

The collective-bargaining agreement which Respondent signed with Teamsters 371 is captioned ''Agreement Between Teamsters Union Local No. 371 and Associated Contractors of Rock Island Covering Heavy Construction in Rock Island and Mercer County in Illinois and Scott County in Iowa.'' The text of this agreement is the same as that negotiated between the Associated Contractors of Illinois and the Illinois Conference of Teamsters, except that the contract signed by Respondent specifically includes Scott County, Iowa, and certain Illinois counties.

By virtue of certain language in the Teamsters 371 contract which Respondent signed in 1978, Respondent bound itself to comply with future contracts negotiated by the Associated Contractors of Rock Island. The language in question is found at the recognition clause, and is supplemented by recitations in the preamble. The preamble recites that the parties recognize that collective bargaining by and between local unions and individual contractors could create ''numerous separate labor agreement with differing standards of wages, hours and working conditions,'' and ''in turn would prevent contractors from competing for available work on the basis of like labor costs and would create inequities and inequalities among employees doing the same type of work in the same area.'' The preamble further recites that:

> In order to avoid such undesirable circumstances and achieve the stabilization of wage rates and working conditions . . . the parties desire and intend this to be a multi-employer, multi-union negotiated agreement established for the classes of employees involved . . . regardless of the contractor for whom they work or the Local Union which represents them.

The recognition clause of the same contract provides that the conference of local unions recognizes the multiemployer association as the bargaining agent for all employers who have so authorized the association, and continues:

> Individual Employers who have not so authorized the Association shall, by becoming party to this agreernent also become part of said multi-employer bargaining unit, and withdrawal therefrom may be accomplished only by written notice to the Conference, at least sixty (60), but no more than ninety (90) days prior to the date of expiration of this agreement or, of any renewal period hereof. Notice to the Association, wherever notice is required herein, shall constitute notice to each and all members of the multi-employer bargaining unit.

Even if the above language did not bind Respondent to successive contracts between the Associated Contractors of Rock Island and Teamsters 371, Respondent is bound nevertheless by the automatic renewal language of the Teamsters 371 contract which it signed in 1978:

> This Agreement shall become effective as of the 1st day of May 1977, and shall remain in full force and effect until the 30th day of April 1980, and each year thereafter, unless written notice of termination or desired modification is given at least sixty (60) days, but no more than ninety (90) days prior to the expiration date by either of the parties hereto.

At no time did Respondent serve Teamsters 371 with notice of withdrawal from the multiemployer bargaining unit, termination of the delegation of bargaining authority implicit in its participation in the multiemployer bargaining unit, or termination of the 1978 collective-bargaining agreement.

Respondent's 1978 job paving Mount Joy Road was not covered by the Davis-Bacon Act. Respondent admitted, and the record shows, that Respondent paid wages and health and welfare benefit contributions in accordance with its obligations under the collective-bargaining agreements with the Charging Parties.

Respondent maintained no payroll record or peronnel records which would show its method of obtaining labor for the 1978 job. The record indicates, however, that Respondent couplied with the collective-bargaining agreements with the Charging Parties. First, Respondent had no record of grievances filed alleging failure to comply with the Charging Parties' labor agreements. The Operating Engineers 537 agreement provides for exclusive referral, and its members would be subject to intraunion discipline if they were to accept employment from a signatory contractor without going through the referral procedure. Further, health and welfare records indicate that Respondent hired three individuals who were members of Operating Engineers 537, and none were disciplined for such misconduct. Moreover, although Respondent employed five individuals in this craft who apparently were from its Waterloo operation, Respondent made health and welfare and pension contributions on behalf of these individuals as well to the Operating Engineers 537 funds, with arrangements for the subsequent transfer of such funds to the corresponding Waterloo local funds, in accordance with normal procedures and the Operating Engineers 537 contract.

Respondent used the Laborers 309 referral hall, for the referral slips are in evidence, along with the health and welfare records showing payments on behalf of employees in this craft. Respondent employed its laborers workforce through referral by Laborers 309. Employees in this craft who were not referred by Laborers 309 may have been ''key men'' permitted by the contract, or workers in excess of those which Laborers 309 was able to supply. Nevertheless, Respondent paid health and welfare contributions on behalf of *all* laborer employees to the Laborers 309 fund, as required by the Laborers 309 contract.

Cement Masons 544 had no records available of 1978 referrals or fund contributions because of a fire in its offices which destroyed such records. Nevertheless, Respondent admitted that it substantially complied with the requirements of its 1978 collective-bargaining agreement with Cement Masons 544.

Records maintained by Teamsters 371 indicate that Respondent made pension payments to the Central States Pension Fund in accordance with the requirements of the Teamsters 371 contract, and that Respondent employed at least one driver who was a member of Teamsters 371. The Teamsters 371 contract requires hiring exclusively by referral by the Union, but allows contractors to bring in 20 percent of its workforce from other areas.

### D. *Division St. I Job (1981)*

Respondent returned to the Quad Cities in 1981 to serve as general contractor and paving contractor for a project entailing paving Division Street in Davenport. The job entailed an estimate of 80 working days, with 113.5 actual working days during 1981. The job was to commence on approximately April 1, 1931, concluded on or about December 8, 1981, and entailed a contract price of $1,351,560.59.

Bogue and Jackson represented Respondent at a prejob conference which occurred at the Ramada Inn in the Quad Cities. Representatives of tbe various craft unions were present, including Don Hainline for Cement Masons 544. On July 21, 1981, Jackson signed the Cement Masons 544 then-current collective-bargaining agreement. This collective-bargaining agreement contained the same automatic renewal language as the Cement Masons 544 collective-bargaining agreement which Respondent had signed in 1978.

Respondent did not sign any further agreements with the other Charging Parties. Nevertheless, Respondent again complied with the terms of the agreements which it had signed in 1978, as updated by successor agreements. Specifically, Respondent used the Operating Engineers 537 referral hall to obtain part of its workforce in this craft, and paid health and welfare contributions on behalf of all its employees in this craft to the Operating Engineers 537 trust funds, with appropriate subsequent transfers of funds to the home local union trust funds on behalf of those Waterloo employees who had authorized such transfers.

Similarly, Respondent made payments to the Laborers 309 health and welfare fund on behalf of all its employees in this craft. Several of its laborers were in fact members of Laborers 309. In light of the exclusive hiring hall procedures under the Laborers 309 collective-bargaining agreement and the fact that a member of Respondent's laborers' workforce consisted of members of Laborers 309 in good standing, it is a reasonable inference that these workers were referred in accordance with the referral and hiring provisions of the contract. Referral records for 1981 had existed, but were lost prior to the instant litigation.

Respondent hired two-thirds of its cement masons through referral by Cement Masons 544, and paid health and welfare contributions on behalf of all its employees in this craft to the Cement Masons 544 trust fund. Both the referral records and benefit payment records are in evidence. Insofar as Cement Masons 544 referred workers before Respondent signed the 1981 labor agreement, such request for employees and referrals occurred pursuant to the 1978 labor agreement, which had automatically renewed and was in effect until superceded by Respondent's 1981 agreement.

Finally, Respondent paid health and welfare contributions on behalf of its drivers to the Teamsters 371 trust fund, and hired at least some of its drivers through referral by Teamsters 371, in accordance with Teamsters 371's contractual hiring and referral procedure.

In 1982, long after the 1981 job was completed, both Laborers 309 and Operating Engineers 537 continued to apprise Respondent of modifications of and successor agreements to their respective area labor agreements, and Respondent maintained this correspondence in its files to the date of the hearing. Cement Masons 544 and Teamsters 371 provided similar information during 1981, which Respondent again retained to the present.

### E. *Division St. II Job (1985)*

In 1985 Respondent served as general contractor and paving contractor for a job referred to in this litigation as the Division Street II job. The job, covered by the Davis-Bacon Act, entailed paving 2.37 miles of roadway, for contract price of $711,633.83. The job began with excavation perfored by a subcontractor, Foley, who commenced work during the week ending August 10, 1985, and who worked continuously until the week ending November 23, 1985. Foley resumed and concluded the job during April 1986. Foley is a well-known excavation contractor in the Quad Cities, and signatory to collective-bargaining agreements with each of the Charging Parties. Respondent performed actual paving on this project only during a 6-week period in October and November 1985, when it employed employees in all four of the crafts represented by the Charging Parties. The entire project entailed a total of approximately 7,989.5 hours, of which Respondent's employees performed approximately 52.7 percent. The remaining hours were performed by other contractors, principally Foley.

When Respondent performed this project, it gave no notice to any of the four Charging Parties, and had no contact whatsoever with Operating Engineers 537 or Laborers 309.

Don Hainline, president of Cement Masons 544, visited the jobsite in 1985. He had heard from a member that a job was ongoing at that time, and he went to check the job pursuant to the member's request. Hainline found that Respondent was indeed performing work entailing the cement masons craft. Because the job was already ''half done,'' the remaining work did not entail a substantial job and because Hainline had no employees available to refer to Respondent for employment, he took no action against Respondent. This inaction by Cement Masons 544 does not constitute a waiver of its contract rights since the Union had good reasons for

its inaction and the waiver, if any, is not clear and unmistakable.

Teamsters 371 business agent, Denny West, took office in 1985. West testified that he learned that Respondent was performing the Division Street II job from Don Hainline. West had a conversation with Lawrence Bogue on or about October 11, 1985. On that date, West wrote Respondent a letter stating:

> Dear Sir:
>
> Per our conversation on October 11, 1985 I am asking for what prove [sic] you have that you are not signed to a contract. Please submit all your prove [sic] to me or you are in violation of our standards.
>
> Very truly yours,
>
> TEAMSTERS LOCAL UNION NO. 371
> Denny West
> Vice President and Business Representative

Respondent did not respond to this letter. West testified that he visited the jobsite sometime after he wrote this letter, and found only Foley's crew at work. He, therefore, took no further action against Respondent. I specifically credit the testimony of Hainline and West. Their demeanor was such that I found them to be honest witnesses.

A waiver of rights by a union must be clear and unmistakable. *Metropolitan Edion Co. v. NLRB*, 460 U.S. 693 (1983). There was no clear and unmistakable waiver in this case by the action of Teamsters 371 and Cement Masons 544 regarding the 1985 Division Street II job.

### F. *I-280 Job (1989)*

On or about April 25, 1989, the Iowa Department of Transportation closed the final bidding on a project to pave a 7.8-mile stretch of Interstate 280 within Scott County, Iowa. Respondent was the successful bidder. Respondent and the Iowa Department of Transportation signed the job contract on May 19, 1989. The project entailed a contract price of $4,190,393.72. In the performance of this project, Respondent employed employees in all four of the crafts represented by the Charging Parties.

Jack Schadt of Operating Engineers 537 learned that Respondent as awarded the contract from the Dodge Reports, which is a service which lists contracts. He called Respondent and left messages with Respondent's office secretary, but he received no responses to these inquiries. On or about June 5, 1989, he called again, and this time he reached Steve Jackson. Schadt told Jackson that his union had a contract with Respondent, and asked to meet to discuss arrangements for the job. Jackson told Schadt that he did not think Respondent had a contract with the Union, that Respondent had repudiated or ''backed out of'' the contract in 1983. Schadt offered to send Respondent a copy of the signature page of the contract which Respondent signed in 1978.

By letter dated June 7, 1989, Jackson responded on behalf of Respondent, asserting again that no contract existed. Jackson enclosed a copy of a letter dated September 1983 which Respondent had sent to Des Moines-based Operating Engineers 234. In the 1983 letter, Respondent had asserted it could not meet with Operating Engineers 234 in light of Operating Engineer 234's withdrawal of a representation petition it had filed with the Board's Region 18. Jackson stated, in his cover letter to Schadt:

> As you can see from the facts and events detailed in this letter, the International Union of Operating Engineers does not represent Cedar Valley Corp. Employees.
>
> In accordance with the wishes of our employees, we have not and will not recognize any labor union as a collective bargaining representative of our employees absent a valid election certifying the same.

Schadt and Jackson exchanged further letters reiterating their respective positions.

Laborers 309 learned that Respondent was awarded the 1989 I-280 job also through the Dodge Reports. By certified letter dated May 8, 1989, Laborers 309 business manager, Dan Adams, requested a prejob conference pursuant to its contract with Respondent. Steve Jackson responded on behalf of Respondent, denying the existence of a contract. Laborers 309 sent Respondent a copy of the contract signed by Respondent in 1978. Jackson and Adams exchanged further correspondence, both directly and through their attorneys, until June 19, 1989. Neither party changed position.

Respondent had only one argument in response to the Laborers 309 claim of the existence of a contract: that in 1984 the Iowa Laborers District Council lost a representation election in a proceeding before the Board's Region 18. Laborers 309 is *not* a member of the Iowa Laborers District Council. Respondent sent Laborers 309 a copy of the certification of results of the election. Jackson stated in one letter to Laborers 309, ''it remains our position that no labor organization represents our employees. Specifically, the lapse of more than 10 years together with an intervening decertification election is, we believe, strong evidence in support of that position.''

By certified letter to Respondent dated May 8, 1989, Don Hainline requested a prejob conference on behalf of Cement Masons 544. Jackson replied by letter, denying existence of a collective-bargaining agreement. The parties reiterated their positions in further correspondence between May 8 and June 19, with neither party changing position. Hainline sent Respondent a copy of the collective-bargaining agreement which Respondent had signed in 1981.

Respondent raised only one argument in response to the Cement Masons 544's claim of the existence of a contract: that in 1984 Cement Masons 544's sister local, Cement Masons 818, based in Iowa, had lost a representation election in proceedings on a decertification petition before the Board's Region 18. Jackson sent Hainline a copy of the certification of results of this election and asserted, ''it remains our position that no labor organization represents our employees. Specifically, the lapse of more than seven years together with an intervening decertification election is, we believe, strong evidence in support of that position.''

Denny West of Teamsters 371 learned about Respondent's project from Laborers 309. He called Respondent's offices, and visited the jobsite three times in the spring and summer of 1989. He received no response to his telephone messages. On his first two visits, he knocked on the door of the jobsite trailer; although he could hear voices inside, no one opened the door, and West left. On West's third visit, which oc-

curred in July, he simply entered the trailer without knocking. A man in the trailer said he was a supervisor for Respondent. West introduced himself, showed the supervisor the contract which Respondent had signed and the collective-bargaining agreement then in effect with the Associated Contractors of Rock Island, and a copy of his business card. The supervisor said he would send these documents to Respondent's attorney. Respondent did not reply to Teamsters 371.

Respondent completed all work on this I-280 job prior to the opening of the hearing in this case.

### G. *Legal Analysis*

Respondent raises a number of defenses. It alleges that it should not be bound by the contracts with the four Charging Party Unions because when it signed the contracts in 1978 and 1981 it did so on a ''single project'' basis only, i.e., it signed the contracts and agreed to be bound but only for tbe duration of the job then in progress, namely, the Mount Joy job and the Division Street I job. I do not agree. I do not credit the testimony of either Lawrence Bogue or Stephen Jackson. Neither man was credible on this point. If these were going to be ''single project'' agreements then that would have been written into the contract or noted in some way. It was not. I credit the testimony of the witnesses for the General Counsel who credibly testified that Respondent signed the contracts and did not in any way indicate that they considered themselves bound to the contract only for the duration of the project then under way. The Charging Party Unions even presented samples of ''single project'' contracts they have entered into and all of those contracts are clear of their face that the contracts are for a single project or a limited duration of time.

Respondent also claims that because its employees in Iowa effectively removed sister locals of the four Charging Party Unions as their representatives for purposes of collective bargaining that, therefore, the four Charging Party Unions were likewise decertified and Respondent's contractual obligations to those four Charging Party Unions terminated. The four Charging Party Unions were not parties or even notified about the Region 18 litigation regarding their sister locals. I reject this defense. A decertification of union X does not decertify union Y. If grounds exist to repudiate a contract with union A or grounds exist to justify a refusal to bargain with union A it does not follow that an employer may repudiate a contract with union B or refuse to bargain with union B.

The Board has addressed the question of whether an 8(f) employer is bound, by the terms of his original contract, to successor agreements or to the automatic renewal of the original contract. The Board has uniformly held that employers are bound to such successor contracts and automatically renewed agreements. When, for example, an employer signs a supplemental agreeent whereby he consents to be bound to the area association agreement and to successor association agreements, the Board has stated that the employer is bound to successor agreements until he serves timely notice to terminate the agreement and the delegation of bargaining authority. *Twin City Garage Door Co*., 297 NLRB 119 fn. 2 (1989); *W. B. Skinner, Inc*., 283 NLRB 989 (1987). Similarly, even if the supplemental agreement contains no automatic renewal language, but the master agreement has such a provision, the Board has stated that the employer is thereby bound to successive master agreements until he serves timely notice of contract termination. *Garman Construction*, 287 NLRB 88 (1987).

Further, the Board has stated that an employer's mere withdrawal of bargaining authority from the employer association does not terminate the obligation to abide by the current collective-bargaining agreement, and does not cancel the automatic renewal language of the contract. *Electrical Workers IBEW Local 532 (Brink Construction)*, 291 NLRB 437 (1988), *Carthage Sheet Metal Co*., 286 NLRB 1249 (1987).

When the 8(f) agreement expires and the employer has served timely notice of contract termination, nevertheless, the Board has held the designation of bargaining authority continues. That is, the Board has held that an employer is bound to successive agreements negotiated by the association until the employer withdraws bargaining authority from the association in a timely manner. *Reliable Electric Co*., 286 NLRB 834 (1987); *Kephart Plumbing*, 285 NLRB 612 (1987); *City Electric*, 288 NLRB 443 (1988); *Riley Electric*, 290 NLRB 374 (1988).

The effect of the decisions cited above is clear. Here, Respondent signed collective-bargaining agreements with Operating Engineers 537 and with Laborers 309, and each contract contained an express commitment to abide by the terms of successor association agreements. Respondent never terminated this delegation of bargaining rights in the contractually prescribed manner. Under the cases cited above, Respondent's obligation to be bound by successor agreements continued to the present.

Although the language of delegation of bargaining rights in the Teamsters 371 contract is not as clear as that in Operating Engineers 537 and Laborers 309 agreements, nevertheless the delegation is the logical consequence of Respondent's contractual commitment to be part of the multiemployer bargaining unit. Accordingly, Respondent should be held responsible to abide by the successor contracts negotiated by Teamsters 371 and the Associated Contractors of Rock Island, as these are applicable to the multiemployer bargaining unit referred to in the contract which Respondent signed. Alternatively, Respondent is bound by the automatic renewal language set forth in Teamsters 371's collective-bargaining agreement which it signed in 1978.

Similarly, Respondent is bound by the automatic renewal language of its collective-bargaining agreement with Cement Masons 544. The Board has held that where an employer has not signed a document delegating bargaining authority to an association but has signed an association collective-bargaining agreement with a union providing for automatic renewal, the employer continued to be bound by the collective-bargaining agreement until it serves timely notice of termination of the agreement. The Board has stated that in such circumstances, the union's notice of termination of the contract, served on the association, does not terminate the contract as to the employer who has not delegated bargaining rights to the association. *C.E.K. Industrial Mechanical Contractors*, 295 NLRB 635 (1989).

Needless to say the fact that the number of employers who are members of the Association rises or falls or the fact that many members of the Association withhold bargaining authority from the Association is irrelevant.

In short, Respondent violated Section 8(a)(1) and (5) of the Act by repudiating its collective-bargaining agreements with the four Charging Party Unions during the term of the

contracts and by withdrawing recognition from the four Charging Party Unions.

The contracts now in effect with Laborers 309 (G.C. Exh. 5), Operating Engineers 537 (G.C. Exh. 7), and Teamsters 371 (G.C. Exh. 10) terminate on April 30, 1992. The year-to-year roll-over contract with Cement Masons 544 terminates April 30, 1991. If the Respondent wants to repudiate these 8(f) contracts it is free to do so. But it must do so in the manner prescribed in the contracts.

## CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce with the meaning of Section 2(6) and (7) of the Act.

2. The Unions, Laborers 309, Operating Engineers 537, Cement Masons 544, and Teamsters 371 are labor organizations within the meaning of Section 2(5) of the Act.

3. By repudiating its current collective-bargaining agreements with the four Charging Party Unions and withdrawing recognition from those Unions prior to the expiration of the collective-bargaining agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of tbe Act.

## THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommended that it be ordered to cease and desist and take certain affirmative action designed to effectuate the policies of the Act. The Respondent will be ordered to make whole, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), any employees for losses they may have suffered as a result of the Respondent's failure to adhere to the contract, with interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

## ORDER

The Respondent, Cedar Valley Corp., Waterloo, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition during the term of a collective-bargaining agreement from the four Charging Party Unions, as the exclusive collective-bargaining representatives of the Respondent's employees covered by the agreement.

(b) Refusing to adhere to its current collective-bargaining agreements with the four Charging Party Unions.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the above-described employees, in the manner set forth in the remedy, for any losses they may have suffered as a result of the Respondent's failure to adhere to its contracts.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Waterloo, Iowa copies of the attached notice marked ''Appendices I, II, III, and IV.''[3] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the attached notices for posting by the four Charging Party Unions, if willing, in conspicuous places where notices to employees and members are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.[4]

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[4] General Counsel's motion to correct transcript is granted.

## APPENDIX I

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States of Government

WE WILL NOT, during the term of a collective-bargaining agreement, repudiate that agreement and/or withdraw recognition from Local Union No. 309, Laborers International Union of North America, AFL–CIO as the exclusive collective-bargaining representative of our employees covered by that agreement.

WE WILL recognize and, on request, bargain collectively and in good faith concerning application of the current agreement with Local Union No. 309, Laborers International Union of North America, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit described in the effective bargaining agreement described above during the term of that agreement.

WE WILL honor and follow the terms of the above-described agreement with Local Union No. 309, Laborers International Union of North America, AFL–CIO, which expires on April 30, 1992, whenever we are engaged in projects which fall within its terms or scope.

WE WILL make employees whole for any losses they may have suffered as a result of our failure to adhere to the collective-bargaining agreement as described above as it pertains to the Interstate 280, Scott County project.

CEDAR VALLEY CORP.

## APPENDIX II

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States of Government

WE WILL NOT, during the term of a collective-bargaining agreement, repudiate that agreement and/or withdraw recognition from Local Union No. 544, the Operative Plasterers and Cement Masons International Association, AFL–CIO as the exclusive collective-bargaining representative of our employees covered by that agreement.

WE WILL recognize and, on request, bargain collectively and in good faith concerning application of the current agreement with Local Union No. 544, the Operative Plasterers and Cement Masons International Association, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit described in the effective bargaining agreement described above during the term of that agreement.

WE WILL honor and follow the terms of the above-described agreement with Local Union No. 544, the Operative Plasterers and Cement Masons International Association, AFL–CIO, which expires on April 30, 1991, whenever we are engaged in projects which fall within its terms or scope.

WE WILL make employees whole for any losses they may have suffered as a result of our failure to adhere to the collective-bargaining agreement as described above as it pertains to the Interstate 280, Scott County project.

CEDAR VALLEY CORP.

## APPENDIX III

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States of Government

WE WILL NOT, during the term of a collective-bargaining agreement, repudiate that agreement and/or withdraw recognition from Local Union No. 537, International Union of Operating Engineers, AFL–CIO as the exclusive collective-bargaining representative of our employees covered by that agreement.

WE WILL recognize and, on request, bargain collectively and in good faith concerning application of the current agreement with Local Union No. 537, International Union of Operating Engineers, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit described in the effective bargaining agreement described above during the term of that agreement.

WE WILL honor and follow the terms of the above-described agreement with Local Union No. 537, International Union of Operating Engineers, America, AFL–CIO, which expires on April 30, 1992, whenever we are engaged in projects which fall within its terms or scope.

WE WILL make employees whole for any losses they may have suffered as a result of our failure to adhere to the collective-bargaining agreement as described above as it pertains to the Interstate 280, Scott County project.

CEDAR VALLEY CORP.

## APPENDIX IV

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States of Government

WE WILL NOT, during the term of a collective-bargaining agreement, repudiate that agreement and/or withdraw recognition from Teamsters, Chauffeurs, Warehousemen and Helpers Local 371, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO as the exclusive collective-bargaining representative of our employees covered by that agreement.

WE WILL recognize and, on request, bargain collectively and in good faith concerning application of the current agreement with Teamsters, Chauffeurs, Warehousemen and Helpers Local 371, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit described in the effective bargaining agreement described above during the term of that agreement.

WE WILL honor and follow the terms of the above-described agreement with Teamsters, Chauffeurs, Warehousemen and Helpers Local 371, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO, which expires on April 30, 1992, whenever we are engaged in projects which fall within its terms or scope.

WE WILL make employees whole for any losses they may have suffered as a result of our failure to adhere to the collective-bargaining agreement as described above as it pertains to the Interstate 280, Scott County project.

CEDAR VALLEY CORP.